

Chapter 208-460 WAC

Member Business Loans

MEMBER BUSINESS LOANS

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WAC

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WAC 208-460-010 What is a member business loan? (1) Definition of MBL. "Member business loan" or "MBL" includes any loan, line of credit, letter of credit, or any unfunded commitment to make a loan, where the borrower intends to use the proceeds for any of the following purposes:

- (a) Commercial;
- (b) Corporate;
- (c) Investment property;
- (d) Business venture; or
- (e) Agricultural.

(2) **Exemptions.** The following are not member business loans:

- (a) A business purpose loan fully secured by a lien on a one to four family dwelling that is the member's primary residence;
- (b) A business purpose loan fully secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions;
- (c) One or more business purpose loans to a member or any associated member which in the aggregate do not exceed the amount of 49,999 dollars. The entire amount of such a loan that exceeds this figure, or that causes the aggregate to exceed this figure, is a MBL;
- (d) A business purpose loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or

- (e) A loan granted by a corporate credit union to another credit union.

(3) **Other definitions.** Certain other terms used in this chapter are defined in WAC 208-460-170.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-010, filed 5/1/01, effective 6/1/01.]

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WAC 208-460-020 What member business loans are prohibited? (1) Who is ineligible to receive a member business loan? You may not grant a member business loan to the following:

- (a) Your chief executive officer (typically this individual holds the title of president or treasurer/manager);
- (b) Any assistant chief executive officers (e.g., assistant president, vice-president, or assistant treasurer/manager);
- (c) Your chief financial officer (comptroller); or
- (d) Any associated member or immediate family member of anyone listed in (a) through (c) of this subsection.

(2) **Equity agreements/joint ventures.** You may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(3) **Loans to directors.** A credit union may not grant a member business loan to a director unless the board of directors approves granting the loan and the director is recused from the decision-making process.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-020, filed 5/1/01, effective 6/1/01.]

WAC 208-460-030 What are the requirements for MBL development and construction lending? Unless the director grants a waiver, a credit union that makes MBL development or construction loans is subject to the following requirements:

(1) The aggregate of all such loans may not exceed fifteen percent of net worth. To determine the aggregate, you may exclude any portion of a loan that is:

(a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, and by deposits in other financial institutions; or

(b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state);

(2) The borrower on such loans must have a minimum of:

(a) Thirty percent equity interest in the project being financed if the loan is for land development; and

(b) Twenty-five percent equity interest in the project being financed if the loan is for construction or for a combination of development and construction;

(3) The funds for such loans may be released only after on-site inspections, documented in writing, by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation; and

(4) The credit union may not make such loans unless it utilizes the services of an individual with at least five years direct experience in development and construction lending.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-030, filed 5/1/01, effective 6/1/01.]

WAC 208-460-040 How do you implement a member business loan program? The board of directors must adopt specific member business loan policies and

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review them at least annually. The credit union must utilize the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in, except as required by WAC 208-460-030(4).

Credit unions do not have to hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-040, filed 5/1/01, effective 6/1/01.]

WAC 208-460-050 What must your member business loan policy address?

At a minimum, your member business loan policy must address the following:

- (1) The types of MBL you will make;
- (2) Your trade area;
- (3) The maximum amount of your assets, in relation to net worth, that you will invest in MBL;
- (4) The maximum amount of your assets, in relation to net worth, that you will invest in a given type of MBL;
- (5) The maximum amount of your assets, in relation to net worth, that you will loan to a member or associated members, subject to WAC 208-460-070;
- (6) The qualifications and experience of personnel (minimum of two years) involved in making and administering the loans;
- (7) A requirement for analysis and documentation of the ability of the borrower to repay the loan;
- (8) Receipt and periodic updating of financial statements and other documentation, including tax returns;
- (9) Documentation sufficient to support each request to extend credit, or increase an existing loan or line of credit, except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the documentation must include the following:
 - (a) Balance sheet;
 - (b) Cash flow analysis;
 - (c) Income statement;
 - (d) Tax data;
 - (e) Analysis of leveraging; and
 - (f) Comparison with industry average or similar analysis;
- (10) Collateral requirements, including:
 - (a) Loan-to-value ratios;
 - (b) Determination of value;
 - (c) Determination of ownership;
 - (d) Steps to secure various types of collateral; and
 - (e) How often the credit union will reevaluate the value and marketability of collateral;
- (11) The interest rates and maturities of the loans;
- (12) General MBL procedures which include:
 - (a) Loan monitoring;
 - (b) Servicing and follow-up; and
 - (c) Collection;
- (13) Identification of those individuals prohibited from receiving

member business loans; and

(14) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

The division recognizes that all of the provisions of the policy may not apply to every MBL.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-050, filed 5/1/01, effective 6/1/01.]

WAC 208-460-060 What are the collateral and security requirements?

Unless the director grants a waiver:

(1) All member business loans must be secured by collateral in accordance with this section, except the following:

(a) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and

(b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:

(i) The amount of the loan does not exceed one hundred thousand dollars;

(ii) The aggregate of unsecured MBL under (b) of this subsection does not exceed ten percent of the credit union's net worth;

(iii) The credit union has a net worth of at least seven percent; and

(iv) The credit union submits reports to the division of credit unions with its NCUA 5300 reports, providing figures and other detail as may be requested by the director to demonstrate compliance with (b) of this subsection;

(2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, you may grant the loan with a LTV ratio in excess of eighty percent only where the value in excess of eighty percent is:

(a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or

(b) Insured or guaranteed, or subject to advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).

In no case may the LTV ratio exceed ninety-five percent;

(3) In the case of a member business loan secured by collateral on which the credit union will have a second or lesser priority lien, you may not grant the loan with a LTV ratio in excess of eighty percent; and

(4) In the case of member business loans secured by the same collateral:

(a) On which the credit union will have a first lien as well as other lesser priority liens, you may grant the loans with a LTV ratio in excess of eighty percent only if subsection (2)(a) or (b) of this section is satisfied. In no case may the LTV ratio exceed ninety-five percent; and

(b) On which the credit union will have lesser priority liens but no first lien, you may not grant the loans with a LTV ratio in excess of eighty percent.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-060, filed 5/1/01, effective 6/1/01.]

WAC 208-460-070 How much may a member or associated members borrow?

Unless the director grants a waiver for a higher amount, the aggregate amount

of member business loans to a member or associated members may not exceed the greater of:

- (1) Fifteen percent of the credit union's net worth; or
- (2) One hundred thousand dollars.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-070, filed 5/1/01, effective 6/1/01.]

WAC 208-460-080 How do you calculate the aggregate fifteen percent limit? (1) Step 1. Calculate the numerator by adding together the amount of the member business loans to the member and associated members (if any). From this amount, subtract any portion:

- (a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions; or
- (b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).

- (2) Step 2. Divide the numerator by net worth.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-080, filed 5/1/01, effective 6/1/01.]

WAC 208-460-090 What waivers are available? You may seek a waiver for a type of member business loan in the following areas:

- (1) Development and construction loan requirements under WAC 208-460-030;
- (2) Loan-to-value ratios under WAC 208-460-060;
- (3) Maximum loan amount to a member or associated members under WAC 208-460-070; and
- (4) Appraisal requirements under Section 722.3 of NCUA rules.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-090, filed 5/1/01, effective 6/1/01.]

WAC 208-460-100 How do you obtain a waiver? (1) To obtain a waiver under WAC 208-460-090, a credit union must submit its request to the director. The waiver request must contain the following:

- (a) A copy of your member business loan policy;
- (b) The higher limit sought (if applicable);
- (c) An explanation of the need to raise the limit (if applicable);
- (d) Documentation supporting your ability to manage this activity; and
- (e) An analysis of the credit union's prior experience making member business loans, including, as a minimum:
 - (i) The history of loan losses and loan delinquency;
 - (ii) Volume and cyclical or seasonal patterns;
 - (iii) Diversification;
 - (iv) Concentrations of credit to a member and associated members in excess of fifteen percent of net worth;
 - (v) Underwriting standards and practices;
 - (vi) Types of loans grouped by purpose and collateral; and
 - (vii) The qualifications of personnel responsible for underwriting and administering member business loans.

- (2) The director will:

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- (a) Review the information you provided in your request;
 - (b) Evaluate the level of risk to your credit union;
 - (c) Consider your credit union's historical CAMEL composite and component ratings;
 - (d) Notify you whenever your waiver request is deemed complete; and
 - (e) Notify you of the action taken within forty-five calendar days of receiving a complete request.
- (3) In connection with a waiver request under WAC 208-460-090 (1) through (3):
- (a) The director will provide a copy of the waiver request to Region VI of the NCUA and will consult and seek to work cooperatively with Region VI in making his or her decision on the request;
 - (b) The waiver is not effective until the director approves it;
 - (c) If you do not receive notification within forty-five calendar days after the date the complete request was received by the director, the waiver request is deemed approved by the director; and
 - (d) The director will promptly notify Region VI of the NCUA of his or her decision on the request.
- (4) In connection with a waiver request under WAC 208-460-090(4):
- (a) If the director approves the request, the director will promptly forward the request to Region VI of the NCUA for decision under NCUA rules at 12 C.F.R. 723.12;
 - (b) The waiver is not effective until the regional director of the NCUA approves it in accordance with NCUA rules at 12 C.F.R. 723.12; and
 - (c) The credit union may appeal the regional director's decision in accordance with NCUA rules at 12 C.F.R. 723.13.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-100, filed 5/1/01, effective 6/1/01.]

WAC 208-460-110 How do I classify member business loans so as to reserve for potential losses? Nondelinquent member business loans may be classified based on factors such as the adequacy of analysis and supporting documentation. You must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(1) **Substandard.** A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. It is characterized by the distinct possibility that the credit union will sustain some loss if the deficiency is not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard;

(2) **Doubtful.** A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: Proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans; and

(3) **Loss.** A loan classified loss is considered uncollectible and of

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such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-110, filed 5/1/01, effective 6/1/01.]

WAC 208-460-120 How much must I reserve for potential losses? The following schedule sets the minimum amount you must reserve for classified member business loans:

Classification	Amount Required
Substandard	10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.
Doubtful	50% of the outstanding balance.
Loss	100% of the outstanding balance.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-120, filed 5/1/01, effective 6/1/01.]

WAC 208-460-130 What is the aggregate member business loan limit? The aggregate limit on the amount of a credit union's member business loans is the lesser of:

- (1) One and three quarters times the credit union's net worth; or
- (2) Twelve and one quarter percent of the credit union's total assets.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-130, filed 5/1/01, effective 6/1/01.]

WAC 208-460-140 Are there any exceptions to the aggregate MBL limit?

(1) Credit unions that meet any one of the following four criteria qualify for an exception from the aggregate member business loan limit in WAC 208-460-130:

- (a) Credit unions that have a low-income designation;
- (b) Credit unions that participate in the Community Development Financial Institutions program;
- (c) Credit unions that are chartered for the purpose of making member business loans, as supported by documentary evidence, such as the credit union's charter, bylaws, business plan, field of membership, board minutes and loan portfolio; and
- (d) Credit unions that have a recent history of primarily making member business loans, established by the fact that the outstanding balance of member business loans comprises:
 - (i) At least twenty-five percent of the outstanding balance of the credit union's loans; or

(ii) The largest portion of the outstanding balance of the credit union's loans.

Such facts must be evidenced in an NCUA call report or any equivalent documentation, such as financial statements, for a period within two years before the date of application. For example, a credit union qualifies for the exception under (d)(ii) of this subsection if, based on the outstanding balance of a credit union's loans, the credit union's loan portfolio is comprised of twenty-three percent member business loans, twenty-two percent first mortgage loans, twenty-two percent new automobile loans, twenty percent credit card loans, and thirteen percent total other real estate loans.

(2) Unless the director gives his or her prior consent, a credit union granted an exception from the aggregate MBL limit may not make MBL in excess of the greater of:

(a) Twelve and one quarter percent of the credit union's total assets; or

(b) Three times the credit union's net worth.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-140, filed 5/1/01, effective 6/1/01.]

WAC 208-460-150 How do I obtain an exception? (1) The exception under WAC 208-460-140 (1)(a) and (b) is effective upon written notice to the director of such designation or participation.

(2) To obtain an exception under WAC 208-460-140 (1)(c) or (d), a credit union must submit its request to the director. An exception is not effective until it is approved by the director. The exception request must include documentation demonstrating that the credit union meets the criteria for one of the exceptions. The exception does not expire unless revoked for safety and soundness reasons by the director.

(3) The director will promptly notify Region VI of the NCUA of his or her decision on the request.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-150, filed 5/1/01, effective 6/1/01.]

WAC 208-460-160 What are the recordkeeping requirements? You must separately identify member business loans in your records and in the aggregate on your financial reports.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-160, filed 5/1/01, effective 6/1/01.]

WAC 208-460-170 Definitions. For purposes of this chapter, the following definitions apply:

(1) The "amount" of a MBL includes:

(a) Any unfunded commitment to make the loan;

(b) The outstanding balance of the loan; and

(c) Any undisbursed proceeds of the loan.

(2) A person is "associated" with another if they have a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor.

(3) A "business purpose" loan means a loan where the borrower intends to use the proceeds for any of the purposes listed in WAC 208-460-010(1).

(4) "Development or construction loan" is a financing arrangement for

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acquiring real property or rights to real property, including land or structures, with the intent to develop or improve it for:

- (a) Residential housing for sale;
- (b) Income property;
- (c) Commercial use;
- (d) Industrial use; or
- (e) Similar uses.

(3) "Immediate family member" is a spouse or other family member living in the same household.

(4) "Loan-to-value ratio" or "LTV ratio" is derived by dividing:

(a) The amount of all member business loans by the credit union and loans by other lenders secured by an item of collateral, by

(b) The market value of the item of collateral.

(5) "Member business loan" or "MBL" is defined in WAC 208-460-010.

(6) "NCUA" means the National Credit Union Administration.

(7) "Net worth" is retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease losses.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-170, filed 5/1/01, effective 6/1/01.]